

PROSECUTION OF DRUG ENDANGERED CHILDREN CASES



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Major Crimes Act 18 USC §1153



- ◎ MURDER
- ◎ AGGRAVATED SEXUAL ABUSE, etc.
- ◎ CHILD ABUSE

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Elements Of Child Abuse



IN THE FEDERAL CODE --
THERE IS NO DEFINITION

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Assimilative Crimes Act

18 USC §4



WHEN THERE IS NO FEDERAL DEFINITION FOR
A LISTED FEDERAL CRIME

---- USE THE LAW OF THE STATE WHERE THE
OFFENSE TOOK PLACE

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Arizona Revised Code 13-3623(A)



UNDER CIRCUMSTANCES **LIKELY** TO PRODUCE DEATH OR SERIOUS BODILY INJURY, ANY PERSON WHO CAUSES A CHILD TO SUFFER PHYSICAL INJURY OR,

HAVING CARE OR CUSTODY OF A CHILD, WHO CAUSES OR PERMITS THE PERSON OR THE HEALTH OF THE CHILD TO BE INJURED OR WHO CAUSES OR PERMITS A CHILD TO BE PLACED IN A SITUATION WHERE THE PERSON OR HEALTH OF THE CHILD IS ENDANGERED IS GUILTY OF AN OFFENSE .

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Arizona Revised Code 13-3623(B)



UNDER CIRCUMSTANCES **OTHER THAN** THOSE LIKELY TO PRODUCE DEATH OR SERIOUS BODILY INJURY TO A CHILD, ANY PERSON WHO CAUSES A CHILD TO SUFFER PHYSICAL INJURY OR ABUSE OR,

HAVING CARE OR CUSTODY OF A CHILD WHO CAUSES OR PERMITS THE PERSON OR HEALTH OF THE CHILD TO BE INJURED OR WHO CAUSES OR PERMITS A CHILD TO BE PLACED IN A SITUATION WHERE THE PERSON OR HEALTH OF THE CHILD IS ENDANGERED IS GUILTY.

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States Of Mind



- ◎ INTENTIONALLY OR KNOWINGLY
- ◎ RECKLESSLY
- ◎ CRIMINAL NEGLIGENCE

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“Intentionally” - defined

“Intentionally” or “with the intent to” means, with respect to a result or to conduct described by a statute defining an offense, that a person's objective is to cause that result or to engage in that conduct. ARS 13-105(10)(a)

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"Knowingly" - defined

“Knowingly” means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or believes that the person's conduct is of that nature or that the circumstance exists. It does not require any knowledge of the unlawfulness of the act or omission. ARS 13-105(10)(b)

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“Recklessly” -Defined

“Recklessly” means, with respect to a result or to a circumstance described by a statute defining an offense, that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists.

The risk must be of such nature and degree that disregard of such risk constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but who is unaware of such risk solely by reason of voluntary intoxication also acts recklessly with respect to such risk.

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“Criminal Negligence” - defined

Criminal negligence” means, with respect to a result or to a circumstance described by a statute defining an offense, that a person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists.

The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.
ARS 105(10)(b)

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Standard Of Proof



Beyond a reasonable doubt.

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Drug Laws



POSSESSION OF DRUGS WITH INTENT TO DISTRIBUTE
--- DIFFICULT PROOF ISSUES AT TIMES

SIMPLE POSSESSION IS ONLY A MISDEMEANOR AND USUALLY
CHARGED IN TRIBAL COURT

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Child Abuse Reporting Laws In Indian Country:



- Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3501 et.seq. & 18 U.S.C. § 1169
- Victims of Child Abuse Act: 42 U.S.C. § 13031 et.seq. & 18 U.S.C. § 2258
- Tribal Laws & Ordinances
- Various State Laws (e.g. A.R.S. 13-3620)

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Who is a Mandatory Reporter Under 18 U.S.C. § 1169? (25 U.S.C. 3201 et. seq)



- (A) Medical (B) Educational (C) Admin. officials, child welfare workers, truancy officers; (D) Child care, Headstart, public assist. workers or social workers; (E) Psychiatrists, Psychologists; (F) marriage, family or child counselors (un/licensed); (G) mental health; (H) Law enforcement, court personnel, AND
- SUPERVISORS !!

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18 U.S.C. § 1169: Responsibilities?



- If you are listed in § (a)(1)) and
- *KNOW* or have a *REASONABLE SUSPICION* that a child was ABUSED or actions are BEING TAKEN or WILL BE TAKEN that are REASONABLY EXPECTED TO RESULT IN ABUSE

---YOU ARE REQUIRED TO REPORT!!!

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Section 1169 Definitions:



- “Child”: one who is not married and not 18
- “Child Abuse”: A child is dead, or exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, any bone fracture, evidences subdural hematoma, soft tissue swelling AND
- Such condition is not justifiably explained or may not be the product of accidental occurrence.

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Section 1169 Definitions, cont'd.



- Any case in which a child is subjected to sexual assault, sexual molestation, sexual exploitation, sexual contact or prostitution
- May not cover drug endangered child – but there is still a potential criminal charge of neglect – should report anyway.

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Section 1169: Who do you report to?



- “Local Law Enforcement Agency”
 - The law enforcement agency having the ***primary responsibility*** for the investigation of alleged child abuse in that part of Indian Country (fed, tribal, state);
- “Local Child Protective Services”
 - That agency (fed, state, tribal) with the ***primary responsibility for child protection*** within any community in Indian Country

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Receiving Agency Reporting Procedures-(25 USC § 3203/18 USC § 1169)



- Reports received by 1 or 2 (supra) *shall* notify the other agency and submit a written report (25 U.S.C. § 3203(c))
- Reports on criminal violations with an Indian victim/Indian suspect & received by law enforcement other than FBI *shall immediately* inform FBI
- Responsible law enforcement & child protection agency *shall investigate* alleged abuse (defined)

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Penalties for Failure to Report (18 U.S.C. §§ 1169 & 2258)



- *Failure to Report* and/or “*inhibiting or preventing*” others from reporting
 - Class B Misdemeanor
 - Civil &/or Admin Pen.
 - Revocation of Lic.?
- *Failure to make timely report* (based on learned facts arising to “suspicion”)
 - Class B Misdemeanor
 - Civil &/or Admin Pen.
 - Revocation of Lic.?

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Liabilities for Unsubstantiated Reports?



- § 1169: **No Civil or Criminal Liability** if the following reporting requirements are met:
 - a. based on “*Reasonable Belief*”
 - b. made in “*Good Faith*”
- § 2258: **No Civil or Criminal Liability** for ***good faith*** reporting
 - Presumption of ***good faith*** for reporters

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Authority to Release Information and Records -- 25 U.S.C. §3205



- 25 U.S.C. § 3205 allows the release of information and records to those who need to know in order to perform their duties (e.g., social services, law enforcement)

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Actions Which Do Not Require Parental Consent -- 25 U.S.C. §3206(a)



- If you have reason to believe a child has been abused in Indian Country, you may obtain photographs, x-rays, medical examinations and interviews and psychological exams and interviews

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25 U.S.C. §3206(b)



- Law enforcement and social services may interview a child without first obtaining parental consent if there is reason to believe the child has been abused in Indian Country
- A court order may be obtained if necessary

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QUESTIONS??



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